

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

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|---|---|-------------------------|
| ADRIANA AGUAYO GUTIERREZ AND | § | |
| ISSAC MUNOZ, INDIVIDUALLY AND AS | § | |
| NEXT FRIENDS OF I.M., A MINOR | § | |
| | § | |
| V. | § | |
| | § | |
| UNITED STATES OF AMERICA; | § | CIVIL ACTION NO. |
| MCALLEN HOSPITALS, L.P. D/B/A | § | 7:21-CV-159 |
| MCALLEN MEDICAL CENTER, | § | |
| MECALLEN MEDICAL CENTER, INC.; | § | |
| PEDIATRIX MEDICAL SERVICES, INC. | § | |
| D/B/A PEDIATRIX MEDICAL GROUP OF | § | |
| TEXAS; SAEED UZ-ZAFER JAVED, M.D.; | § | |
| NAMIREMBE JOAN KAZIBWE, M.D.; | | |
| PATRICIA YVONNE PEREZ, NP; AND | | |
| LISA MARIE ELIZALDE, NP | | |

**JOINT DISCOVERY/CASE MANAGEMENT PLAN UNDER RULE 26(F) OF THE
FEDERAL RULES OF CIVIL PROCEDURE**

1. State where and when the meeting of the parties required by Rule 26(f) was held, and identify the counsel who attended for each party.

The Parties conferred by e-mail and teleconference on July 14, 2021.

Laura Brown attended on behalf of the Plaintiffs.

Eduardo Moya attended on behalf of Defendants McAllen Hospitals, L.P. d/b/a McAllen Medical Center, McAllen Medical Center, Inc.

John Faubion attended on behalf of Defendants Saeed Javed, MD., Joan Kazibwe, M.D., Yvonne Perez, NP, Lisa Elizalde, NP, and Pediatrix Medical Services, Inc. d/b/a Pediatrix Medical Group of Texas.

Lance Duke attended on behalf of The United States of America.

2. List the cases related to this one that are pending in any state or federal court with the case number and court.

None.

3. Briefly describe what this case is about.

This is a medical negligence case in which Plaintiffs allege various acts or omissions by Defendants during the provision of healthcare before, during, and after minor child I.M.'s birth caused him to suffer a severe brain injury.

4. Specify the allegation of federal jurisdiction.

Plaintiffs allege the Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1346(b) because the United States is a defendant.

5. Name the parties who disagree and the reasons.

None.

6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

None.

7. List anticipated interventions.

None.

8. Describe class-action issues.

None.

9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

Each party will make its initial disclosures within 14 days of the Rule 26(f) conference pursuant to Rule 26(a)(1)(E) of the Federal Rules of Civil Procedure.

10. Describe the proposed agreed discovery plan, including:

A. Responses to all the matters raised in Rule 26(f).

None, other than specifically addressed below.

B. When and to whom the plaintiff anticipates it may send interrogatories.

Plaintiffs anticipate sending interrogatories to the Defendants on or before September 30, 2021.

C. When and to whom the defendant anticipates it may send interrogatories.

Defendants anticipate sending interrogatories to Plaintiffs on or before September 30, 2021.

D. Of whom and by when the plaintiff anticipates taking oral depositions.

Plaintiffs anticipate deposing individuals listed on the initial disclosures by March 2, 2022.

E. Of whom and by when the defendant anticipates taking oral depositions.

Defendants anticipate deposing individuals listed on the parties' initial disclosures, as well as possibly treating healthcare providers who are not listed, and the parties expert witnesses, by the close of discovery.

F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.

The Plaintiffs anticipate being able to designate experts and provide expert reports by March 2, 2022.

The Defendants anticipate being able to designate responsive experts and provide their reports within sixty (60) days following Plaintiffs' designation of experts and receipt of expert reports.

G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

The Plaintiffs anticipate taking the Defendants' expert witnesses depositions within ninety (90) days of receiving Defendants' expert designation/reports.

H. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

Defendants anticipate taking the Plaintiffs' expert witnesses deposition within ninety (90) days of receiving Plaintiffs' expert designation/reports.

11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

Not applicable.

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

None.

13. State the date the planned discovery can reasonably be completed.

Discovery should reasonably be completed by 60 days prior to the Court's pretrial conference.

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

The parties' attorneys have discussed potential settlement and agree the likelihood of settlement is difficult to evaluate at this early stage of litigation due to the complexity of the medical issues presented in the Complaint.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

The parties' attorneys have met to discuss settlement of this matter but were unable to come to a resolution at that time. The parties' attorneys agree to periodically revisit the issue of settlement as the litigation proceeds.

16. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable, and state when such a technique may be effectively used in this case.

The parties agree to participate in continued settlement discussions after conducting initial discovery and exchange of additional records. The parties believe mediation with a mediator experienced in birth injury cases would be an effective alternative dispute resolution technique.

17. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.

The parties do not wish to proceed with trial before a magistrate judge.

18. State whether a jury demand has been made and if it was made on time.

A timely jury demand was made.

19. Specify the number of hours it will take to present the evidence in this case.

The parties are unable to provide this information with any certainty at this time. The parties estimate that it may take approximately 80 hours to present evidence.

20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

None at this time.

21. List other motions pending.

None.

22. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.

This is a complex medical malpractice case involving numerous parties concerning allegations of a birth-injury. The parties collectively believe that a comprehensive scheduling order including expert designation deadlines and a trial date not prior to September, 2022 would best serve the needs of the case and promote efficiency.

23. List the names, bar numbers, addresses and telephone numbers of all counsel

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing on the following counsel of record via the Court's CM/ECF system on this 23rd day of July, 2021.

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